

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Applications of) MM Docket No. 99-153

READING BROADCASTING, INC.) File No. BRCT-940407KF

For Renewal of License of)
Station WTVE(TV), Channel 51)
Reading, Pennsylvania)

and)

ADAMS COMMUNICATIONS)
CORPORATION)

For Construction Permit for a New)
Television Station to Operate on)
Channel 51, Reading, Pennsylvania)

To: Administrative Law Judge
Richard L. Sippel

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

File No. BPCT-940630KG

MASS MEDIA BUREAU'S COMMENTS ON MOTION TO ENLARGE ISSUES

1. On July 15, 1999, Adams Communications Corporation ("Adams") filed a motion to enlarge issues. The Mass Media Bureau ("Bureau") submits the following comments.

2. Background. Adams seeks to add two issues to this proceeding against Reading Broadcasting, Inc. ("RBI"). The first is whether, in light of adjudicated misconduct concerning RBI's "dominant principal and controlling stockholder," Micheal Parker ("Parker"), RBI is qualified to remain a licensee. The second is whether Parker engaged in a pattern of misrepresentation and/or lack of candor in repeatedly failing to advise the Commission of the actual nature and scope of previously adjudicated misconduct and, if so, the effect of such on RBI's qualifications to remain a licensee.

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3. In support of its requests, Adams recites Parker's ownership of and role in RBI. Specifically, Adams notes that although Parker does not control more than 50% of RBI, he is its largest single stockholder, as well as the company's president and one of its five directors. Thus, Adams argues, misconduct attributable to Parker would be relevant to an assessment of RBI's qualifications. In this regard, Adams alleges that the Commission has found that Parker engaged in serious, disqualifying misconduct in Commission proceedings. In particular, Adams cites Religious Broadcasting Network, 3 FCC Rcd 4085, 4090 (Rev. Bd. 1988) ("Religious"); Mt. Baker Broadcasting Co., Inc., 3 FCC Rcd 4777 (1988) ("Mt. Baker"); and Doylan Forney, 3 FCC Rcd 6330, 6338 n. 1 (Rev. Bd. 1988). In each decision, according to Adams, the Review Board or the Commission found fault with actions taken by Parker or an applicant with which he was involved. As to these matters, Adams argues that the Commission specifically held that Parker's behavior raised "[s]erious character questions" which dictate addition of the requested issue, citing Two If By Sea Broadcasting Corporation, 12 FCC Rcd 2254, 2257 (1997) ("Two If By Sea") (Therein, the Commission denied a request by the applicant, Two If By Sea Broadcasting Corporation ("TIBS"), to acquire without a hearing the license of Station WHCT-TV, Hartford, from a trustee in bankruptcy.)

4. Regarding the second requested issue, Adams contends that Parker's willingness to deceive the Commission is demonstrated by "misleadingly innocent descriptions" of the Religious and Mt. Baker decisions cited above in subsequent applications. Adams posits that Parker deliberately sought to blunt the impact of those decisions so that he could not only secure grants of those applications, but could also cite those grants as an indication that his qualifications problems were insignificant. Adams

argues that in *Two If By Sea* the Commission rejected the applicant's (TIBS) claim that a hearing regarding Parker was unnecessary because the Commission had previously found Parker fully qualified. More to the point, Adams urges that in three applications filed in 1991 and 1992¹ Parker sought to create the misimpression that no serious questions had previously been raised about his qualifications. Adams further charges that similar shortcomings pervade the 1991 application² filed by TIBS for a television station in Norwell, Massachusetts (a station that TIBS has since sold), and a 1989 application³ filed by Parker to acquire a television translator in Los Angeles.

5. Discussion. A motion to enlarge the issues must be based on specific allegations of fact. Folkways Broadcasting Co., 33 FCC 2d 806, 811 (Rev. Bd. 1972). Those allegations must raise a substantial and material question of fact. *See Amando Garcia*, 3 FCC Rcd 1065 (Rev. Bd. 1988); Section 1.229 of the Commission's Rules. With respect to the first requested issue, Adams' allegations clearly do not raise a material question of fact. Thus, the requested issue should not be added. However, with respect to the second requested issue, Adams' allegations appear to raise a question about Parker's candor, which, absent an adequate explanation, warrants addition of the requested issue.

6. As noted, Adams seeks an issue based on "adjudicated" misbehavior attributable to Parker. Relying on the Commission's decision in *Two If By Sea*, Adams

¹ The three applications are: File No. BTCCT-911113KH, an application to transfer control of Station WTVE(TV); File No. BTCCT-920603KG, an application to transfer control of Station KVMD(TV); and File No. BALIB-920810OM, an application to assign the license of international station KCBI (now KAIJ).

² *See* File No. BTCCT-910725KG.

³ *See* File No. BPTTL-891208ZI.

contends that the Commission “mandated” addition of the requested issue. *See* 12 FCC Rcd at 2257. However, Adams glosses over the fact that the cited cases on which it relies reference actions that occurred before 1988, more than 10 years ago. In this regard, the Commission has determined that the relevant time period for character inquiries, even as to consideration of past conduct indicating a flagrant disregard of the Commission’s regulations and policies, is 10 years. *See Policy Regarding Character Qualifications in Broadcast Licensing*, 102 FCC 2d 1179, 1229 (1986) (subsequent history omitted) (“Character Policy Statement”). Thus, because the activities Adams relies on are all beyond the limitations period specified by the Commission, addition of the requested issue is not warranted.

7. The second requested issue focuses on alleged misrepresentations and/or lack of candor by Parker. Misrepresentation involves false statements of fact made with an intent to deceive the Commission. *Fox River Broadcasting, Inc.*, 93 FCC 2d 127, 129 (1983) (“Fox River”). Intent to deceive may be found from the false statement of fact coupled with proof that the party making it had knowledge of its falsity. *See David Ortiz Radio Corp. v. FCC*, 941 F.2d 1253, 1260 (D.C. Cir. 1991). Intent may also be inferred from motive. *See Joseph Bahr*, 10 FCC Rcd 32, 33 (Rev. Bd. 1994). Lack of candor involves concealment, evasion or some other failure to be fully informative, also with an intent to deceive. *Fox River, supra*. The duty of candor requires an applicant before the Commission to be “fully forthcoming as to all facts and information relevant” to its application. *Swan Creek Communications, Inc. v. FCC*, 39 F.3d 1217, 1222 (D.C. Cir. 1994). Relevant information is such that may be of “decisional significance.” *RKO General, Inc. v. FCC*, 670 F.2d 215, 229 (D.C. Cir. 1981), *cert. denied*, 456 U.S. 927 and

457 U.S. 1119 (1982). Finally, although the applicants cited for misbehavior and the applicants whose representations Adams finds lacking are not identical, it appears that Parker's ownership and/or role in each is sufficient to view them as his creatures. *See Character Policy Statement*, 102 FCC 2d at 1217-20.


8. As noted by Adams, the descriptions of Parker's prior history before the Commission in applications to transfer control of stations WTVE(TV), KCBI, KVMD(TV), and WHRC(TV) reference the Religious and Mt. Baker decisions. The Bureau agrees with Adams that the descriptions of those decisions, which were supplied by the respective applicants, do not fairly disclose all relevant facts regarding Parker. Specifically, the applicant disclosures indicate that the Religious decision found that Parker was an undisclosed real party only with respect to the "comparative analysis of SBB's [the applicant] integration and diversification credit." The reality was that Parker was found to have been the real party in interest following addition of a specific issue to determine whether such was the case. Thus, the applicant disclosures erroneously characterize the Review Board's conclusion and, apparently, seek to discourage further inquiry into Parker's actions. Likewise, the applicant disclosures concerning Mt. Baker are clearly insufficient. Specifically, they reveal no more than the denial of that applicant's construction permit. They do not hint at, much less disclose, the Commission's stated concern that the applicant intended to deceive the Commission by falsely representing that the facilities constructed were the same as or substantially similar to those authorized. Thus, the Bureau believes that, absent an adequate explanation from RBI, a substantial question is raised that the applicants, with Parker's knowledge and involvement, lacked candor in their discussions of Parker's actions and/or

role as described in the Religious and Mt. Baker decisions.⁴ Finally, unlike the activities deemed irrelevant with respect to the first requested issue, the representations involved in the second requested issue are relevant since they were made in 1991 and 1992 – well within the timeframe established by the Commission.⁵

9. Accordingly, the Bureau opposes addition of the first requested issue but supports addition of the second requested issue absent an adequate explanation from RBI.

Respectfully submitted,
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⁴ Any such explanation should also address Parker's application for the Los Angeles low power station.

⁵ In this regard, although the Los Angeles translator application was filed in 1989, it remained pending into the 1990s, and it is unclear when, if ever, that application was amended to reflect the true state of affairs concerning the Religious and Mt. Baker decisions.

CERTIFICATE OF SERVICE

Talya Lewis, secretary of the Mass Media Bureau's Complaints and Political Programming Branch certifies that she has on this 11th day of August, 1999, sent by first class United States mail (or by hand) copies of the foregoing "Mass Media Bureau's Opposition to Motion to Enlarge" to:

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